

76-4290

6 MAY 1979

MEMORANDUM FOR: Deputy Director for Administration

FROM :

[REDACTED] Logistics and Procurement Law Division
Office of General Counsel

STATINTL

SUBJECT :

Claims Arising from Damage to or Loss of More than One
Privately Owned Vehicle (POV)

1. Largely as a result of personal property damage claims arising from the disturbances overseas, the question has arisen as to the propriety of payment for the subject losses.

2. PL 88-588, Military Personnel and Civilian Employees' Claims Act (Act) as amended, now 31 U.S.C. 240 et seq, and [REDACTED] which implements STATOTHR that legislation within the Agency, do not limit recovery solely because the claimant owns two or more motor vehicles. The limitation of a compensable claim to one automobile pertains to damage incurred during transportation of the vehicle only because Agency employees, as other Federal Government personnel, are limited to shipment of one POV by pertinent regulations. By way of example, a claim would not properly be payable for loss of alcoholic beverages shipped as household goods (HHG) since those items are contrary to the HHG regulations. Damage to a non-proscribed item, however, would be compensable. Moreover, damage to permissible items in an overweight shipment would be payable, although the employee would have to pay separately for the extra weight. The restriction imposed by transportation requirements, however, should not by itself preclude payment for damage to two POV's where ownership by a claimant is otherwise reasonable, useful, and proper.

3. It is noteworthy that the Act applies worldwide. Its purpose is to maintain morale by alleviating concern over personal losses attendant to performance of duty and to relieve hardship which arise when Government personnel are exposed to unusual risks. In discussing the ambit of protection afforded by the Act, the Army Claims Service in its publication, DA Pam 27-162, para 2-10 states:

One of the most beneficent applications of the Act is in compensating for damage to or loss of property occasioned by some form of belligerent activity. This type of claim is payable only when the loss is a direct consequence of the activity, but it need

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not be so direct as actual destruction in combat. In addition to actual combat losses, or unjust confiscation by a foreign power or its nationals, destruction by the claimant or others to prevent capture or confiscation is compensable. So are losses due to guerilla depredations or brigandage whether or not the United States is involved.

4. The premise underlying the legislation is equity. Determination of whether or not any item lost or damaged is compensable under federal law and Agency regulations is whether or not it is reasonable, useful, and proper under the circumstances. This determination is a factual one requiring the consideration of all the surrounding particulars. In a known unstable area, it may very well not be reasonable, useful, and proper to possess more than one POV or certain other items. Conversely, in a more stable location, an employee may be within the realm of prudence if he possesses more than one vehicle. In such case where an overseas employee owns two POV's, it is true that he is entitled to ship to his next duty station only one. Nonetheless, he usually has adequate time prior to departure to dispose of the extra vehicle. In the absence of sufficient time, there normally is an alternative means of selling the vehicle, such as through an agent holding power of attorney or other such instrument. (Note it should not be construed that the vehicle had been purchased solely for resale.) The fact remains that possession of two vehicles per se may not be unreasonable. Each such claim should continue to be considered on a case-by-case basis. As an additional example, where a claimant who owns two automobiles occupies government-furnished quarters and both are damaged by the same event, such as the collapse of a carport roof, damage to the two vehicles would be compensable under the Act.

5. In conclusion, it is recommended that, in view of the statutory language and intention, each claim be considered in its merits. With the exception of loss or damage in transit claims, it is the opinion of this Office that, without additional circumstances, mere possession of more than one POV should not be non-compensable; rather, the property involved should be judged by the reasonable, useful, and proper criteria.

[Redacted] STATINTL